

Message Text

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APPROVED BY L/M:KEMALMBORG

OPIC/GC - A. KEESEE

OPIC - G. O. MORGAN

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FM SECSTATE WASHDC

TO AMEMBASSY LUSAKA

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E.O. 11652: N/A

TAGS: CFED

SUBJECT: GOZ APPROVAL OF TAW TRANSFERS

REF: (A) LUSAKA 2221; (B) LUSAKA 2224; (C) 75 STATE 303677;
(D) LUSAKA 218

1. THANK YOU FOR COMMENTS REFS A AND B. HOWEVER, EVEN ESTABLISHMENT OF "SUSPENSE ACCOUNT" NOT REPEAT NOT FULLY SATISFACTORY ALONE SINCE DEPARTMENT UNDERSTANDS FROM REF D PARA 2 THAT FREE USG USE OF SUSPENSE ACCOUNT FUNDS WOULD STILL REQUIRE APPROVAL OF GOZ MINFIN OR CENTRAL BANK OF ZAMBIA. GOAL OF DEPARTMENT IS TRANSFER OF FUNDS (OWED TO USG BY TAW) FROM TAW TO US EMBASSY BANK ACCOUNT FROM WHICH FUNDS WILL BE FREELY EXPENDABLE BY EMBASSY FOR USG EXPENSES IN ZAMBIA.

2. THEREFORE, PRIOR TO FURTHER ATTEMPTS TO ESTABLISH SUSPENSE ACCOUNT DEPARTMENT REQUESTS THAT APPROACH TO GOZ BE MADE ON TWO OTHER BASES.

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3. FIRST, SECTIONS 3, 4, AND 5 OF EXECUTIVE AGREEMENT ON

INVESTMENT GUARANTEE BETWEEN USG AND GOZ EFFECTED BY EXCHANGE OF DIPLOMATIC NOTES SIGNED AUGUST 11, 1966 (TIAS 6104, THE "BILATERAL") GRANTING USG RIGHT TO RECEIVE

TRANSFERS OF LOCAL CURRENCY PURSUANT TO INVESTMENT GUARANTEE ISSUED BY USG ON GOZ APPROVED PROJECTS PROVIDING SUCH FUNDS USED FOR LOCAL USG EXPENSES. GOZ APPROVAL, BY MINFORN AFFAIRS NOTE NUMBER 193 OF FEBRUARY 16, 1971 TO AMEMBASSY (THE "FGA") APPROVED TAW PROJECT FOR US GUARANTEE PURPOSES UNDER THE BILATERAL. TOGETHER BILATERAL AND FGA ESTABLISH USG RIGHT TO RECEIVE TRANSFER OF TAW FUNDS TO US EMBASSY BANK ACCOUNT PURSUANT TO USG GUARANTEE, AND PROVIDE BASIS FOR REQUEST FOR GOZ APPROVAL NOW OF SUCH TRANSFERS IN THE FUTURE. COPIES OF BILATERAL AND FGA SHOULD BE IN POSSESSION OF EMBASSY.

4. BASIS FOR VIEW THAT BILATERAL PERMITS TAW TO TRANSFER LOCAL CURRENCY TO EMBASSY BANK ACCOUNT IS THAT SUCH TRANSFER WOULD BE "UNDER SUCH GUARANTEE" REFERRED TO SECTION 5 OF BILATERAL, IN THAT: (A) USG (THROUGH AID, THEN OPIC) ISSUED INVESTMENT GUARANTEE TO PRUDENTIAL INSURANCE CO. COVERING \$6,000,000 LOAN TO TAW FOR TAW'S OPERATIONS THROUGHOUT AFRICA; (B) AFTER DEFAULT BY TAW ON SUCH LOAN USG (THROUGH OPIC) PAID PRUDENTIAL UNDER GUARANTEE AND, IN EXCHANGE, ACQUIRED NOTES ORIGINALLY ISSUED BY TAW TO PRUDENTIAL; (C) TAW'S DEFAULT IS ATTRIBUTABLE TO TAW ACTIVITY THROUGHOUT AFRICA (INCLUDING ZAMBIA; (D) USG (THROUGH OPIC) IS NOW COLLECTING FROM TAW THE PROCEEDS OF TAW'S DISPOSAL OF ASSETS IN PARTIAL SATISFACTION OF DEFAULTED AMOUNTS DUE UNDER THE NOTES; AND (3) IT IS ONLY OPIC'S SHARE OF TAW PAYMENTS TO CREDITORS WHICH ARE TO BE TRANSFERRED TO EMBASSY BANK ACCOUNT, AND THESE FUNDS WILL BE SPENT ONLY FOR USG COSTS IN ZAMBIA AND NOT REPEAT NOT TRANSFERRED ABROAD.

5. TEXT OF GOZ APPROVAL SHOULD BE AS CLOSE AS POSSIBLE TO THE FOLLOWING: "THE GOZ HEREBY APPROVES TRANSFERS OF FUNDS THAT MAY BE MADE BY TAW INTERNATIONAL LEASING CORPORATION TO AN ACCOUNT MAINTAINED BY THE US EMBASSY WITHIN ZAMBIA, WHICH FUNDS ARE TO BE EXPENDED BY THE EMBASSY UNCLASSIFIED

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SOLELY TO MEET ITS COSTS WITHIN ZAMBIA, AND CONFIRMS THAT SUCH CASH TRANSFERS DO NOT CONTRAVENE THE LAWS OF ZAMBIA."

6. SECOND, GOZ APPROVAL MAY ALSO BE REQUESTED ON CONCURRENT GROUND THAT REQUEST IS A MATTER OF COMITY BETWEEN USG AND GOZ AND A POINT OF IMPORTANCE TO USG.

7. IF ABOVE APPROACH IS UNSUCCESSFUL, PLEASE NOTIFY

DEPARTMENT ASAP. DEPARTMENT MAY THEN REQUEST ESTABLISHMENT OF SUSPENSE ACCOUNT BASED ON GRINDLAY LANGUAGE IN REF D AS LAST RESORT.

8. ANY APPROACH SHOULD EMPHASIZE THAT APPROVAL IS MATTER OF COMITY; THAT EMBASSY ACCOUNTS MAY BE USED FOR COLLECTION OF DEBTS OWED TO USG WHERE, AS HERE, SUCH FUNDS WILL BE USED ONLY IN HOST COUNTRY AND NOT REPEAT NOT CONVERTED TO DOLLARS; AND THAT APPROVAL IS WARRANTED IN INTER-GOVERNMENTAL CONTEST EVEN IF SUCH APPROVAL WOULD NOT REPEAT NOT NORMALLY BE GIVEN WHERE USG NOT REPEAT NOT INVOLVED.

9. ALL DISCUSSIONS WITH GOZ SHOULD AVOID THIRD PARTIES. CARE SHOULD ALSO BE TAKEN TO AVOID CRITICISM OF TAW OR ITS OFFICERS. APPROACHES SHOULD BE MADE ON BEHALF OF USG AND NOT REPEAT NOT ON BEHALF TAW OR CREDITORS COMMITTEE. APPROVAL DOCUMENT MENTIONED PARA 5 ABOVE SHOULD BE AUTHENTICATED BY US COUNSEL OR OTHER APPROPRIATE OFFICIAL. IT IS IMPORTANT TO HAVE SUCH DOCUMENT FROM PROPER OFFICIAL OF GOZ ITSELF AND NOT REPEAT NOT MERELY A GENERAL STATEMENT OF LOCAL CURRENCY CONTROL REGULATIONS.

10. DUE TO PRIOR INVOLVEMENT OF TREASURY AND STATE VIA ADMIN APPROVAL TO OPIC OF SUCH TAW TRANSFERS TO EMBASSY ACCOUNTS AT OTHER POSTS, INVOLVEMENT OF USG AGENCY OPIC, AND NEED TO PROTECT TAW FROM POSSIBILITY THAT TRANSFERS MIGHT BE ILLEGAL ABSENT GOZ APPROVAL, DEPARTMENT SEEKS RESOLUTION LEGALITY ISSUE ASAP.

11. RE REF D PARA 3, SPECIFIC AMOUNT OWED OPIC OUT OF FUNDS NOW OR FORMERLY IN RESTRICTED TAW ACCOUNT, BASED ON LATEST INFO RE ACCOUNT BALANCE, IS KWACHE EQUIVALENT OF UNCLASSIFIED

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\$220,933.

12. PLEASE CABLE TEXT APPROVAL AS SOON AS OBTAINED AND POUCH TO DEPARTMENT ATTENTION S. WHILDEN, L/M.

13. THANK YOU FOR YOUR CONTINUING ASSISTANCE. KISSINGER

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